

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

DEBORAH KINDER, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

MEREDITH CORPORATION, an Iowa
corporation,

Defendant.

Case No. 1:14-cv-11284-TLL-CEB

Hon. Thomas L. Ludington

**UNOPPOSED MOTION FOR ORDER PERMITTING DEFENDANT TO
FILE CERTAIN PORTIONS OF OPPOSITION TO CLASS
CERTIFICATION MOTION AND ACCOMPANYING
EXHIBITS UNDER SEAL**

Pursuant to Local Rules 5.3(b) and 26.4, Defendant Meredith Corporation (“Meredith” or “Defendant”) respectfully requests that the Court enter an Order permitting Defendant to file certain portions of its Opposition to Plaintiff’s Motion for Class Certification and accompanying exhibits under seal. Defendant certifies that, pursuant to Local Rule 7.1(a), there were conferences between attorneys for Defendant and attorneys for Plaintiff Deborah Kinder (“Plaintiff”) on August 27, 2015 and September 14, 2015 and Plaintiff’s attorneys indicated that they would not oppose the relief sought in this Motion.

WHEREFORE, Meredith respectfully requests that this Court enter an Order (i) granting Meredith's Motion for Order Permitting Defendant to File Under Seal Certain Portions of its Opposition to Class Certification Motion and Accompanying Exhibits, and (ii) providing such other and further relief as the Court deems reasonable and just.

Dated: September 14, 2015

/s/ Jeffrey Landis

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**BRIEF IN SUPPORT OF DEFENDANT’S UNOPPOSED MOTION FOR
ORDER PERMITTING DEFENDANT TO FILE CERTAIN PORTIONS OF
OPPOSITION TO CLASS CERTIFICATION MOTION AND
ACCOMPANYING EXHIBITS UNDER SEAL**

STATEMENT OF ISSUES PRESENTED

Should Defendant Meredith be permitted to file certain portions of its Opposition to Plaintiff's Class Certification Motion and accompanying exhibits under seal?

Defendant's Answer: Yes.

CONTROLLING AND MOST IMPORTANT AUTHORITY

E.D. Mich. L.R. 5.3

E.D. Mich. L.R. 26.4

Defendant Meredith Corporation (“Meredith”) submits this brief in support of its unopposed motion to file certain portions of its Opposition to Plaintiff’s Motion for Class Certification and certain of its accompanying exhibits under seal because these documents contain Meredith’s and/or Meredith’s service providers’ sensitive and proprietary information, the publication of which could cause serious competitive or financial harm to Meredith and/or its service providers. The Court already authorized the sealing of the majority of these materials in connection with Plaintiff’s Motion for Class Certification (ECF Nos. 35-40; 55-59) in the Court’s September 8, 2015 Order Granting in Part and Denying in Part Plaintiff’s Motion to Seal (“September 8 Order”) (ECF No. 54). The few additional materials not addressed by the September 8 Order should likewise be sealed.

The right of public access to judicial records is not absolute, especially where the files may be improperly used. *Tilmon-Jones v. Bridgeport Music, Inc.*, No. 11-13002, 2013 WL 3279168, at *1-2 (E.D. Mich. June 4, 2013) (citing *Nixon v. Warner Comm.*, 435 U.S. 589, 597 (1978)). It is within the discretion of the district court to seal records where there are compelling reasons to justify non-disclosure. *In re Knoxville News-Sentinel Co., Inc.*, 723 F.2d 470, 473-476 (6th Cir. 1983). Documents that contain “private or sensitive information” are judicial records at risk of improper use and as such may be filed under seal. *Turner v. Bresette*, No. 11-15036, 2012 WL 4511244, at *2 (E.D. Mich. Sept. 30, 2012)

(citing E.D. Mich. L.R. 5.3). Courts have also found that protecting the privacy rights of third parties is a compelling reason, as is the likelihood of serious competitive or financial harm to a business, which may include disclosure of a party's confidential financial information. *See, e.g., In re Knoxville News-Sentinel Co., Inc.* 723 F.2d at 477; *Tinman v. Blue Cross & Blue Shield of Michigan*, 176 F. Supp. 2d 743, 745-46 (E.D. Mich. 2001); *Carter v. Welles-Bowen Realty, Inc.*, 628 F.3d 790, 791 (6th Cir. 2010); *Vetel Diagnostics, Inc. v. Bossardet*, No. 11-cv-14575, Order Authorizing Filing of Documents Under Seal, (E.D. Mich. Oct 12, 2012).

Here, there are compelling reasons to permit Meredith to file certain portions of its Opposition to Plaintiff's Motion for Class Certification and certain of its accompanying exhibits under seal because these documents reference and contain information that is sensitive and/or proprietary. Furthermore, these documents contain confidential business information that, if publicly disclosed, would cause competitive and financial harm to Meredith and/or its service providers. Sealing is the only available means to satisfactorily preserve the competitive and financial interest in protecting the private and sensitive information contained within these documents, as required under Local Rule 5.3(b)(2)(A)(iv).

Documents Requested to be Filed Under Seal

- **Exhibit D to the Landis Declaration. Meredith-Axiom Restated Data License Agreement:** Exhibit D is the same document as Exhibit L to the

Declaration of Ari Scharg (“Scharg Declaration”) (ECF No. 38), which the Court authorized be sealed in its September 8 Order. Meredith now also seeks to file this document under seal consistent with the September 8 Order.

- **Exhibit E to the Landis Declaration. Excerpts from Acxiom Deposition:** Exhibit E consists of excerpts from the deposition of non-party Acxiom Corporation. Meredith requests that portions of Exhibit E containing non-public details regarding how Acxiom’s proprietary product functions be redacted. Meredith provided Exhibit E to counsel for Acxiom who requested that these particular portions of the testimony be submitted in redacted form. Acxiom also designated these materials as “Confidential” under the Protective Order, which authorizes parties to designate as “Confidential” non-public discovery material that the Producing Person would not want to be made public in the ordinary course of its activities, including, but not limited to, technical, business, financial, personal or other information.
- **Exhibit F to the Landis Declaration. Meredith/Alliant Marketing Database Contributor Agreement:** Exhibit F is the same document as Exhibit Q to the Scharg Declaration, which the Court authorized be sealed in its September 8 Order. Meredith now also seeks to file this document under seal consistent with the September 8 Order.
- **Exhibit I to the Landis Declaration. Meredith/Wiland Cooperative Database Agreement:** Exhibit I is the same document as Exhibit O to the Scharg Declaration, which the Court authorized be sealed in its September 8 Order. Meredith now also seeks to file this document under seal consistent with the September 8 Order.
- **Exhibit J to the Landis Declaration: Wiland Business Requirements Documents.** Exhibit J is a subset of the document attached as Exhibit E to the Declaration of Amir Missaghi (“Missaghi Declaration”)(ECF No. 39), which the Court authorized be sealed in its September 8 Order. Meredith now also seeks to file this document under seal consistent with the September 8 Order.
- **Exhibit K to the Landis Declaration: Meredith/Abacus Cooperative Agreement:** This exhibit is the same document as Exhibit S to the Scharg Declaration, which the Court authorized be sealed in its September 8 Order. Meredith now also seeks to file this document under seal consistent with the September 8 Order.

- **Exhibit L to the Landis Declaration: Excerpts from Meredith's Objections and Responses to Plaintiff's First Set of Interrogatories.** Plaintiff Kinder has requested that Meredith redact from this exhibit any references to magazines she subscribed to, other than those identified in her Class Certification motion.

With respect to the Opposition itself, Meredith seeks to seal only those portions of the Opposition citing to Exhibits which Meredith has requested be sealed for the aforementioned reasons. Specifically, Meredith requests that it be permitted to seal four sentences that, citing to Exhibit E, describe how Acxiom's proprietary product functions. Meredith also requests that it be permitted to seal three sentences that, citing to Exhibit I, describe particular contractual provisions in the Meredith/Wiland Cooperative Database Agreement. Finally, Meredith requests that it be permitted to seal one sentence that, citing to Exhibit K, describes a particular contractual provision in the Meredith/Abacus Cooperative Agreement.

Wherefore, Defendant respectfully requests that this Court enter the Proposed Order submitted contemporaneously with the filing of this Motion.

Dated: September 14, 2015

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*Counsel for Defendant Meredith
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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2015, I electronically filed the foregoing Unopposed Motion for Order Permitting Defendant to File Opposition to Motion for Class Certification and Accompanying Exhibits Under Seal with the Clerk of the Court via the ECF system, which shall send a notification of such filing to all counsel of record.

/s/ Jeffrey Landis

Jeffrey Landis